

240. The apparatus of claim 207, wherein said apparatus is in combination with a spinal implant.

241. The apparatus of claim 240, wherein said implant is in combination with a fusion promoting material.

242. The apparatus of claim 241, wherein said fusion promoting material is harvested bone.--

REMARKS

In the Office Action dated November 28, 2001, claims 107-130, 132-168, 170, and 171 were withdrawn from consideration by the Examiner as being directed to a non-elected invention. Applicant has cancelled claims 107-130, 132-168, 170, and 171.

Applicant has added new claims 172-242 to further define the present invention. Independent claim 172 recites "said guard having a flat portion between at least some of said spine engaging portions for preventing over-penetration of said spine engaging portions into the spine." Independent claim 207 recites "said guard having openings in said sides." Both of claims 172 and 207 recite "a guard having a passage for providing guided access to the disc space and the adjacent vertebral bodies."

Applicant's claimed apparatus including "said guard having a flat portion" and "said guard having openings in said sides" of independent claims 172 and 207, respectively are shown, for example, in Fig. 5 and described at least at page 35, lines 5-23 of Applicant's specification. According to the Examiner at paragraph two of the Office Action, originally filed claim 1 was "constructively elected by original presentation for prosecution on the merits." Applicant submits that canceled claim 1 is also shown in

Fig. 5. Thus, new claims 172 through 242 are directed to the elected subject matter.

In view of the foregoing amendments and remarks, Applicant respectfully requests the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 50-1068.

Respectfully submitted,

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